IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3261 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMJIBHAI HARJIBHAI

Versus

GEB

Appearance:

MR DHIRENDRA MEHTA for Petitioner

MR MD PANDYA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 27/03/2000

and

24/04/2000

ORAL JUDGEMENT

Rule. Mr. M.D.Pandya, learned counsel for respondent no.1 waives the service of rule. In the facts and circumstances of the case, the petition has been taken up for final hearing to day.

2. This petition is filed by the petitioner for an appropriate writ, order or direction quashing and setting aside supplementary as well as revised bills Annexures A and E respectively, and for declaration that the action of the Gujarat Electricity Board -respondent no.1 herein and its officers is illegal, contrary to law, unwarranted, null and void. A prayer is also made to quash and set aside an order dt. 15th March, 1999 passed by the Appellate Committee in Appeal No.B.240/98-99 and by directing the respondent -Board to refund an amount of Rs.92,532/- already deposited by the petitioner with the Board along with interest thereon at the rate of 18% p.a. A further prayer was made restraining the respondent from disconnecting electricity supply provided to the petitioner for industrial purposes.

3. The case of the petitioner is that he is running a textile factory at 68, Sonal Industrial Estate, Pandesara, Udhana, Surat. The petitioner was having electric connection for industrial purposes i.e. for lighting as well as running his factory. According to him, on 9th March, 1994, a checking squad of the respondent Board inspected the factory of the petitioner and took away the meter by applying seal for testing by a Laboratory of the Board. The petitioner was not present at that time. According to him, signature of a person was taken who had no authority to sign, nor he was a representative of the petitioner. A supplementary bill was then issued to the petitioner on the allegation that there was theft of electric power by the petitioner. The said bill was for Rs.4,62,614-65 Ps. On 6th April, 1994, the electric connection was restored on deposit of 20% of the amount of supplementary bill by the petitioner who preferred an appeal.

4. Before the Appellate Committee, it was strenuously argued by the petitioner that the supplementary bill was liable to be cancelled and/or withdrawn as the petitioner had not committed any illegality or irregularity, particularly when the meter was not tested by the Laboratory. It was stated that the meter was not traced and did not reach the Laboratory and could not, therefore, be tested. The appeal was, however, partly allowed on load factor and days/hours charged in the supplementary bill. Accordingly, a revised supplementary bill was issued on April 23, 1999 in pursuance of an order passed by the Appellate Committee. The petitioner has challenged the above order by filing the present petition.

5. When the matter was placed for admission before this court, my learned brother D.C.Srivastava, J. issued notice on April 13, 1999, and made it returnable on 14th May, 1999. On 18th May, 1999, ad-interim relief was granted in terms of Para 11(E) i.e. against disconnection of electric power on certain terms and conditions.

6. I have heard Mr. D.K.Mehta, learned counsel for the petitioner and Mr. M.D.Pandya, learned counsel for the respondents.

7. Mr. Mehta submitted that the petitioner had not committed theft of electricity and no theft was proved. He contended that the only method by which a theft could be proved was the report of the Laboratory. For that the meter was taken for testing. It, however, could not be traced and could not be tested in the Laboratory. According to the Counsel, unless the evidence which could connect the petitioner with the theft of electricity is adduced, appreciated and proved, the petitioner cannot be held liable for committing theft of electricity and could not be punished. As it was not done, the orders passed by the authorities are required to be quashed.

8. He also submitted that when the checking squad came, the petitioner was not present. His brother was present. But he had no authority to make any statement, as he was neither the agent of the petitioner, nor his representative. If any statement was given by him, it cannot bind the petitioner and on the basis of such statement, the petitioner cannot be held liable. Mr. Mehta also urged that it is not unknown that at the time of inspection/checking, statements are being recorded by a checking squad under duress/compulsion and signatures are being obtained. On the basis of such statements, therefore, it cannot be said that there was illegality, irregularity or theft. It can be decided only from the report of the Laboratory. Even though the petitioner insisted for checking of the meter by the Electricity Board, it was not done. Mr. Mehta stated that it was not the case of the Board that the meter was not available, and hence it could not be tested. If it was taken away by the officers of the respondent -Board and they did not take it for Laboratory test, by taking undue advantage of their own act, they cannot hold the petitioner liable directing him to pay additional amount illegally.

9. Mr. Mehta submitted that though serious allegations were made in petition, no counter affidavit

is filed by the respondents. He also submitted that it was a case of the petitioner that some new machinery was installed later on, but it was not put to use and hence an act of issuance of supplementary bill was clearly illegal and unlawful. The counsel, therefore, submitted that the order passed by the appellate authority deserves to be quashed and set aside and supplementary bill issued by the Board is required to be declared illegal.

10. Mr. Pandya, on the other hand, supported the orders passed by the authorities. He submitted that there was tampering with the meter and the said fact was found by the officers of the checking squad. At the time of inspection, the petitioner was not present but his brother was present. His statement was, therefore, recorded, and he had admitted that they had tampered with the meter so that it may run slow. On the basis of that statement, Rojkam was prepared and it was reduced in writing. The brother of the petitioner had stated that whatever was written down in the statement was correct and that he agreed with the facts mentioned. He had also stated that if any supplementary bill will be issued, they would pay the amount. He further stated that the said statement was given by him voluntarily without any duress and/or coercion. The statement was also signed by him. Mr. Pandya, therefore, submitted that it cannot be contended that the statement could not have been relied upon by the authorities.

11. Mr. Pandya also submitted that since the meter was not traceable, it could not be tested by the Laboratory, but from that circumstance alone, it cannot be said that a person cannot be held liable. From the surrounding circumstances, if it is proved that there was a theft of electricity, an appropriate action can be taken by the authority. Regarding installation of new machinery, he submitted that, in fact, it was the case of the petitioner that new machinery was already installed and it was made functional. Only defence put forward on behalf of the petitioner was that entire machinery was not operated at a time, but the said defence was not believed by the authorities. Regarding writing and statement of the brother of the petitioner, Mr. Pandya submitted that there was no reason for the checking squad to obtain any statement under threat, duress, coercion or compulsion. Moreover, no grievance whatsoever was made either by the petitioner or by his brother immediately and only after supplementary bill was issued, such plea was put forward by them.

12. Finally, Mr. Pandya submitted that the Appellate

Committee consists of experts including a judicial officer. It has considered the case in detail and partly allowed the appeal of the petitioner. In exercise of power of judicial review under Article 226/227 of the Constitution, this court ordinarily does not enter into realm of appreciation and reappreciation of evidence and substitute its finding for the finding recorded by the Committee. He, therefore, submitted that the petition deserves to be dismissed.

13. Having heard the learned counsel for the parties, in my opinion, the petition deserves to be partly allowed. On merits, I do not find any infirmity in the orders impugned. At the time of inspection, certain irregularities were found. It was alleged that there was tampering with the meter by the consumer. It is true that the petitioner was not present but his brother was very much present. He admitted that there was tampering with the meter so that it may run slow and that is how theft of electricity was committed by them. His statement was reduced in writing and in token thereof, signature of his brother was also obtained. After receipt of supplementary bill, no doubt, it was contended that the statement was taken under duress, but it is pertinent to note that no immediate action was taken either by the petitioner or by his brother. Ordinarily, if a statement of a person is taken under duress or threat or compulsion, such person would take an appropriate action immediately by informing higher authorities that the officer subordinate to the said authority had obtained his statement which was not voluntary. In the instant case, nothing of that sort was done. Again, whether a statement was obtained or not under duress or coercion is a pure question of fact and in exercise of extraordinary power under Article 226/227 of the Constitution of India, this court cannot enter into such question. It is also relevant and material to note that the Appellate Committee on which the power is conferred and which consists of experts and one of the officers is a retired judicial officer appreciated the facts and circumstances of the case, and did not agree with the contention raised by the petitioner. The finding recorded by the Appellate Committee cannot be substituted by this court in exercise of power of judicial review.

27/03/2000

14. It may also be appreciated that if the contentions of the learned counsel for the petitioner is accepted and it is held that in case of failure to get

the meter tested in the laboratory, no finding regarding theft of electricity can be recorded either by the Board or by the Appellate Committee, serious consequences would ensue. Suppose, a consumer deliberately burns or destroys the meter, testing of meter is impossible. In that case, a finding regarding theft of electricity cannot be reached. Such a position cannot be countenanced by court of law. Again, it is settled principles of law that a person cannot take undue advantage of his own wrong. In an illustration referred to hereinabove, only with a view to avoid the liability to which a customer is otherwise bound, mischief can be committed by him. No person can get rid of such liability by taking law in his hand and by taking undue advantage of the situation created by him contrary to law. I am, therefore, of the opinion that even if in given a case, the meter is not tested in a laboratory, the Board or Appellate Authority or a court of law may consider other facts and circumstances, material on record, statements of licensee as also of the officers of the Board and may come to a conclusion that there was tampering with the meter or theft of electricity.

15. In the instant case, on the basis of the statement of real brother of the petitioner, the Board held that there was a theft of electricity which fact was admitted by the person at the time of inspection of meter and he had also assured that the petitioner will pay the additional amount to which they would be bound and in token of such statement, he had put his signature. It, therefore, cannot be said that no such finding could have been recorded by the Board. The Appellate Committee in exercise of appellate power again reconsidered all the points and arguments advanced before it and partly allowed the appeal by recording certain findings which are not open to challenge in exercise of powers under Article 226 and/or 227 of Constitution of India.

16. For the foregoing reasons, I do not see any ground and/or reason to interfere with the order passed by the Appellate Authority.

17. Mr. Mehta, learned counsel for the petitioner finally urged that even if this court is of the opinion that no ground has been made out by him, one fact may be appreciated. The petitioner is in financial difficulty and the amount sought to be recovered from him is substantial and hence sufficient time may be granted to him to pay the said amount.

18. At the time of preliminary hearing, interim

relief was granted on certain terms and conditions. The counsel stated that the said amount is already paid by the petitioner. In the facts and circumstances of the case, I am of the opinion, that ends of justice would be met, if the petitioner is granted time to pay the amount due by installments. Accordingly, the following directions are issued :-

(1) The petitioner will pay the entire amount due and payable;

(2) Such amount will be paid by him in three equal monthly installments;

(3) First instalment will be paid by him on or before 30th June, 2000, second instalment on or before 31st July, 2000 and the third instalment on or before 31st August, 2000.

(4) In case of default in payment of any instalment, as aforesaid, this order will not operate and the Board will be at liberty to take appropriate action without being inhibited by this order.

(5) Over and above aforesaid installments, the petitioner will continue to pay regular bill.

Liberty to apply in case of difficulty.

19. The petitioner is accordingly partly allowed. Rule is made absolute to the above extent. In the facts and circumstances of the case, there shall be no order as to costs.

Date:24/4/2000. (C.K.THAKKER, J.)
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